



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 122

[EPA-HQ-OW-2011-0188; FRL-9608-3]

RIN 2040-AF22

National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** On October 21, 2011 (76 FR 65431) (FRL-9481-7) EPA published a proposed rule entitled, National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule. As initially published in the **Federal Register**, written comments on the proposal were to be submitted to EPA on or before December 20, 2011 (a 60-day public comment period). Since publication, EPA has received several requests for additional time to submit comments. Therefore, the public comment period is being extended for 30 days and will now end on January 19, 2012.

**DATES:** Comments may be submitted until January 19, 2012.

**ADDRESSES:**

*Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OW-2011-0188, by one of the following methods:

<http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

*Email:* [ow-docket@epa.gov](mailto:ow-docket@epa.gov), Attention Docket ID No. EPA-HQ-OW-2011-0188.

*Fax:* (202) 566 – 9744

*Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA–HQ–OW–2011–0188, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

*Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. EPA–HQ–OW–2011–0188. Such deliveries are accepted only during the Docket Center’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OW–2011–0188. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA might not be able

to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at

<http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., N.W., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact, Becky Mitschele, Water Permits Division, Office of Wastewater Management (4203M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-6418; fax number (202) 564-6384; email address: [mitschele.becky@epa.gov](mailto:mitschele.becky@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information is organized as follows:

**I. General Information**

*A. Does This Action Apply to Me?*

This proposed rulemaking would apply to concentrated animal feeding operations (CAFOs) as defined in the National Pollutant Discharge Elimination System (NPDES) regulations at 40 CFR 122.23(b)(2), pursuant to section 502(14) of the Clean Water Act (“CWA”). An animal feeding operation (AFO) is a CAFO if it meets the regulatory definition of a Large or Medium CAFO (40 CFR 122.23 (b)(4) or (6)) or has been designated as a CAFO (40 CFR 122.23 (c)) by the NPDES permitting authority or by EPA. The following table provides the size thresholds for Large, Medium and Small CAFOs in each animal sector.

Table 1 – SUMMARY OF CAFO SIZE THRESHOLDS FOR ALL SECTORS

Sector	Large	Medium <sup>1</sup>	Small <sup>2</sup>
Cattle or cow/calf pairs.....	1,000 or more.....	300–999.....	Less than 300.
Mature dairy cattle.....	700 or more.....	200–699.....	Less than 200.
Veal calves.....	1,000 or more.....	300–999.....	Less than 300.
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Swine (weighing over 55 pounds).....	2,500 or more.....	750–2,499.....	Less than 750.
Swine (weighing less than 55 pounds).....	10,000 or more.....	3,000–9,999.....	Less than 3,000.
Horses.....	500 or more.....	150–499.....	Less than 150.
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Sheep or lambs.....	10,000 or more.....	3,000–9,999.....	Less than 3,000.
Turkeys.....	55,000 or more.....	16,500–54,999.....	Less than 16,500.
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Laying hens or broilers (liquid manure handling system).	30,000 or more.....	9,000–29,999.....	Less than 9,000.
Chickens other than laying hens (other than a liquid manure handling system).	125,000 or more....	37,500–124,999...	Less than 37,500.
Laying hens (other than a liquid manure handling system).	82,000 or more.....	25,000–81,999.....	Less than 25,000.
Ducks ( other than a liquid manure handling system).	30,000 or more.....	10,000–29,999.....	Less than 10,000.
Ducks (liquid manure handling system) .....	5,000 or more.....	1,500–4,999.....	Less than 1,500.

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Notes:

<sup>1</sup>May be designated or must meet one of the following two criteria to be defined as a medium CAFO: (A) Discharges pollutants through a man-made device; or (B) directly discharges pollutants into waters of the United States which pass over, across, or through the facility or otherwise come into direct contact with the confined animals. 40 CFR 122.23(b)(6).

<sup>2</sup>Not a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis. 40 CFR 122.23(b)(9).

That table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rulemaking. The table lists the types of entities that EPA is currently aware of that could be regulated by this action. Other types of entities not listed in the table could also be CAFOs. The owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information.

To determine whether your operation is a CAFO, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How can I get copies of these documents and other related information?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2011-0188. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., N.W., Washington, DC 20460. Although all

documents in the docket are listed in an index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government online source for Federal regulations at <http://www.regulations.gov>. Electronic versions of the proposed rule and factsheet are available on EPA’s NPDES Web site at <http://cfpub.epa.gov/npdes/afo/aforule.cfm>. An electronic version of the public docket is available through the EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

*C. What Should I Consider as I Prepare My Comments for EPA?*

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency might ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

## 2. *Submitting Comments to EPA.*

Direct your comments to Docket ID No. EPA–HQ–OW–2011–0188. EPA’s policy is that all comments received will be included in the public docket without change and could be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The <http://www.regulations.gov> website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the

use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

### *3. Submitting Confidential Business Information.*

Do not submit CBI information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part of or all the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

## **II. Extension of Comment Period for the NPDES CAFO Reporting Rule**

### *A. Proposed NPDES CAFO Reporting Rule*

On October 21, EPA published in the **Federal Register** the proposed NPDES CAFO Reporting Rule for public comment. EPA is requesting public comment on the proposed rule options for gathering the information identified in the proposal and the alternative approaches to achieve water quality protection. Copies of the proposal are available on EPA's Web site at [http://www.epa.gov/npdes/regulations/cafo\\_fr\\_proposed\\_reporting\\_rule.pdf](http://www.epa.gov/npdes/regulations/cafo_fr_proposed_reporting_rule.pdf). More information regarding the NPDES permitting program for CAFOs can be found at [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=7](http://cfpub.epa.gov/npdes/home.cfm?program_id=7).

### *B. Extension of Comment Period*

EPA is extending the deadline for submitting comments on the proposed NPDES CAFO Reporting Rule to January 19, 2012. The original deadline for comments, based on a 60-day



comment period, was December 20, 2012. EPA's decision responds to a request from several organizations to extend the comment deadline in order to provide a longer period of time in which to provide comments. EPA believes that this 30-day extension will assist in providing an adequate amount of additional time for these organizations as well as other members of the public to review the proposal and to provide written comments.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 13, 2011.

Nancy K. Stoner,

Acting Assistant Administrator, Office of Water.

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